3. Creating the Benefits of Local Competition

Both the Consumer Advocate and the DOJ have pointed out that BST's analysis of the public interest ignores the benefits of competition in the local market. Both conclude that there is vastly more to be gained by obtaining increased competition in the local market than in the long distance market

> (DOJ49) Still more important, BellSouth and its economic experts, as well as experts retained by BOCs in previous entry applications, have failed to give adequate consideration to the more substantial benefits to be gained from requiring that the BOCs' local markets be open before allowing InterLATA entry. Their analyses have simply assumed that the requirements of section 271 would be satisfied, or address the benefits of local competition in a cursory manner that under values the importance.. .
>
> Because the local markets are both much larger than InterLATA markets and still largely monopolies, the benefits from opening the BOCs' local market to competition prior to allowing BOC InterLATA entry are likely to substantially exceed the benefits to the gained from more rapid BOC participation in long distance markets.
>
> (DOJ5 l)The Department does not endorse the aspects of the BellSouth's analysis, which fails to take into account important differences between various types of entrants. But, more significantly, BellSouth and the BOC experts failed to appreciate that regardless of the incentives a provider may have to enter local markets, if it does not have an adequate opportunity to enter, then entry will not occur.
>
> (S6) It is widely acknowledge that integrated services are valuable to consumers (e.g., one-stop shopping) and can reduce retailing costs for suppliers, and I noted in my initial affidavit that delaying BOC InterLATA entry and thus BOCs ability to offer such services comes at a cost. But this cost is short-lived, and outweighed by the benefit: instead of leaving provision of integrated services as a monopoly of the local BOC, opening the local market enhances the ability of all other providers to compete for providing integrated services. Therefore, if one views integrated services as important, than permitting broad competition in their provision -- by making currently monopoly local inputs and services widely and efficiently available to competitors -- should be a central goal of public policy..

4. The Costs of Allowing Premature RBOC Entry into Long Distance

The problem of premature entry of RBOCs into in-region long distance should be seen as more complicated than the quantified value of price cuts. Premature entry has a number of anti-competitive implications that would deal a severe blow to local competition.

> (B6) We also believe that if BellSouth is given access to in-region InterLATA toll, it will have no incentive to actually provide competitive local exchange carriers (CLECs) with interconnection or the other necessary pre-entry conditions. On the contrary, BellSouth will become motivated to drag its corporate feet and hinder CLECs from having the same ubiquitous, bundled service offerings, thus giving BellSouth a significant advantage. Therefore, CA urges the Commission to withhold any statement verifying that BellSouth is in compliance with section 271(c) of the Act.
>
> *(S26) The ability* of IXCs and other non-BOCs to accomplish such vertical integration, however, depends heavily on obtaining adequate cooperation from the BOCs in providing interconnection to and unbundling of the local networks. Consequently, a consideration of double marginalization does not necessarily suggest a more lenient standard for BOC entry, in large part because such a standard is less likely to elicit adequate BOC cooperation. Moreover, to stress BOC's unique ability to operate as an integrated provider would be to concede that the prospects for local competition in access are not rosy, a far cry from positions taken by BOCs in various proceedings.
>
> (B 13) Since "local" services would have to be part of any complete bundle, effective competition in local exchange and access services are necessary condition for effective competition in bundled services. Hence, the competitive implications for the local exchange and access markets also apply to this bundled service market. Taken together, these factors are likely to keep local and toll prices at the levels that preceded the Telecommunications Act of 1996 if the application is approved. They also could curb technological advancement because, as the explosion of technology since the Bell breakup dramatically demonstrates, competition foster's technology in this industry
>
> (B5) In any case, the entry into South Carolina interLATA markets may not result in gains if there is no fill-service competition to start with in South Carolina.. .
>
> Put another way, would a level competitive playing field result if BellSouth is the only company with the current capability to provide ubiquitous unbundled services, that is, both local exchange and total service? BellSouth believes that this bundling

of service is a great benefit:

(B9) Q. IS THERE WORKABLE COMPETITION IN THE LOCAL EXCHANGE MARKETS?

A. No. "Workable competition" exists in a market if any firm participating in that market will lose its market share by raising its price above the cost level (where "cost" includes a reasonable return on investment) of efficient firms.. .

The conditions for workable competition (primarily the presence of many players) has started to develop in local telecommunications markets. However, if the Commission and the FCC permit BellSouth's premature entry into the in-region InterLATA market, then the beginning of competition may be at an end.. .

(DOJ34) The limited investment in new facilities means that for the immediately foreseeable future, competition to serve a large majority of South Carolina consumers -- -- most residential customers and customers of all kinds outside of the largest urban areas of the state -- -- can occur only through resale or the use of unbundled network elements. Competitors seeking to use these two entry vehicles will be critically dependent on BellSouth.

(S 16- 17) As a general matter, exclusive reliance on policing conduct and undoing competitive damage ex post is problematic; this is why, for example, antitrust merger policy places such weight on preventing anti-competitive mergers rather than allowing all mergers and attempting to address anti-competitive conduct after the fact. In the present context, authorizing BOC entry prematurely and retying solely on post entry safeguards to attempt to open BOC local markets to competition is especially dangerous.

5. The Reasons for the Failure of Local Competition

BST claims that local competition has not been created because the long distance companies are gaming the regulatory process by not trying hard enough to get into the local market because they do not want the RBOCs to get into long distance. Simple logic refutes this argument and the evidentiary record in this proceeding demonstrates that BST has made it extremely difficult to enter the local market.

(S12-13-14) BOC experts argue that authorizing BOC InterLATA entry is likely to accelerate rather than delay local competition by removing the alleged incentive of the major IXCs to strategically postpone their own local entry for fear that would trigger approval of BOC InterLATA entry. Indeed, various BOC experts cite this strategic incentive rather than BOC mounted-barriers as the main cause of the slow development of local competition. This argument is erroneous for several reasons.

First, the Open Market Standard does not require local entry by IXCs... The standard recognizes that lack of entry may be due to independent business decisions unrelated to artificial entry barriers... Second, whatever the merits of the claim about strategic delay incentives of IXCs, one must distinguish between IXCs and other potential local competitors that are absent from the long distance market. Such CLECs have no long distance base to protect and thus would have considerably weaker incentives to delay their local entry for purposes of the delaying BOC InterLATA authority.

Third, the theory that local entry is delayed primarily due to CLECs' reluctance to trigger approval of BOC InterLATA authority is not supported by the experienced in states where 'non-BOC LECS already offer InterLATA services...

In short (a) the alleged incentives of IXCs to strategically delay their local entry in order to delay triggering BOC InterLATA entry would not apply nearly as much to other potential local entrants; (b) the strategic incentive theory is not supported by the facts; and both IXCS and other potential local entrants are equally adamant about BOC imposed entry barriers and the need to withhold BOC InterLATA authority until the local market is opened. A reasonable reading of the evidence in the SBC and Ameritech applications is that the respective BOCs have failed to undertake fully the major market-opening measures required by the Act. Thus the main issue is ability to enter

(B4-5) BellSouth could have already entered the out of region InterLATA toll market which would improved that market. BellSouth's entry into the interLATA market could have already resulted in gains to consumers out of their region. Has BellSouth entered Bell Atlantic's market? We do not know what BellSouth is doing in that market because the company has not answered questions.

(B14) New entry into this market is made difficult by a number of factors, including: (1) brand recognition; (2) established monopoly power; (3) high-cost of new ubiquitous facilities and; (4) the fact that complete, easy and cost-based access to existing facilities has not yet been accomplished and is being resisted by the incumbents. If entry were that easy, why isn't BellSouth entering and competing in local exchange service in the contiguous markets of other BOCs.

B. MAKING THE PROCESS WORK

1. The Need for Cooperation

There is a fundamental problem in the process by which the opening of the local network to competition has been progressing and the core of the problem is the unwillingness of the RBOCs to make the process work. RBOC cooperation is critical but BST has singled out potential competitors and made it extremely difficult for them to enter the market.

> (DOJ3) Although BellSouth asserts that it has met the checklist and public interest requirements of section 27 1, but that assertion rests in large measure on BellSouth's view as to the nature of those requirements -- a view that is often at odds with the plain language of the statute and with the Commissions prior decisions, as well as the 1996 Act underlying competition policy on which DOJ bases its evaluations.
>
> (B 5) This game of playing "hide the ball" from regulators is not new, but may be illustrative of BellSouth behavior if it is allowed to enter the into latter market.
>
> (FLA71-72) Based on the parties' positions above, the primary problem with physical collocation to date is that no requests have been implemented. As noted above, BST has been unsuccessful in meeting the required time frames in its agreements, and based on the record, it does not appear that this situation will change. To date, only one physical co-location agreement has been completed, and the record shows that at this point in time, BST is not providing physical collocation to ALECs at parity with the manner in which it provides it to itself or its affiliates. BST has made no showing before this commission as to why it cannot meet the time frames set by this Commission or in ALEC agreements with MCI, AT&T, a condition set forth in order No. P.SC. -96-1579- FOF-TP.
>
> A major impediment of filling requirements of the Act is the "catch 22" situation with respect to virtual collocation. By definition, virtual collocation requires that only BST personnel have access to the ALECs collocation space. Thus, only BST can act to perform the functions at the collocation necessary to establish and provide service to an ALEC's customers. MCI states that collocation arrangement is one of the most important ways from an engineering perspective that an ALEC can compete with BST. BST has committed only that it will negotiate with ALECs pursuant to its bona fide request (BFR) process in an attempt to establish so-called "glue" charges for combining UNEs at virtual collocations. BST even

then states that it will not commit to providing the combining activity

Therefore, since the vast majority of today's collocation arrangements are virtual, ALECs are faced with a situation in which they must either pay the "glue" charge or wait until BST completes ALEC orders for physical collocation arrangements. At hearing, BST witness Scheye offered another alternative, i.e. don't utilize collocation arrangements.

Staff views this position as unacceptable. Even witness Scheye admitted that collocation is required for checklist compliance for interconnection and access to UNEs. The glue charges itself is the subject of much dispute since the Act requires that interconnection and UNE rates be based on cost. In addition MCI states that the glue charges is in direct violation of its agreement with BST. Even if the pricing issue is resolved in the near-term, the problems still remains with respect to the length of time required for BST to establish physical collocations, and thus the inability of ALEC's to be able to compete meaningfully in the marketplace. BST has demonstrated no willingness in this proceeding to address this issue in a cooperative fashion. Staff believes that it has the responsibility to do so. Until that time, BST, under its own definition, remains out of compliance with the requirements of the Act.

(FLA 85) Lastly, improved communications between BST and ALECs are essential before service can be deemed satisfactory or at parity. Although everyone carries some responsibility for this, we believe that the Act places a major responsibility on BST to make local competition viable. To that extent, BST must take a leadership role in making that happen.

(Fla 84) Some ALECs are in fact providing service to their customers over interconnection facilities. Substantial evidence was submitted, however, showing that much remains to be done before BST can be said to be in compliance with the requirements of the Act. ALECs individual problems and difficulties with this checklist item, while important themselves, when viewed together, generally indicate that BST has yet to develop the ability, and by the testimony of its witnesses, the mind-set, to provide all facets of interconnection as required in the Act, in a timely and efficient manner.

(FLA 83), AT&T states that a comparison between the way BST treats ALECs and other ILECs may be the one of one of the most definitive tests for discrimination. AT&T notes that BST currently exchanges local traffic, and jointly provides other services with almost every ILEC in Florida pursuant to negotiated interconnection agreements.. . AT&T states that there are no provisions in the ILEC agreements for the "endlessly time-consuming bona fide requests for every

detail of the joint provision of service that BellSouth imposes on ALECs." AT&T asserts that this disparate treatment constitutes discrimination and hence BST has not complied with requirements of the interconnection checklist.

2. A Consistent and Repeated Failure to Comply with Contracts and Commission Orders.

BST has entered into a series of arbitration agreements with potential entrants. It has repeatedly failed to live up to the terms of those agreements. BST has been ordered by the Commission to make certain services available to and take certain actions to facilitate local competition. It has failed to do so and its proposed Statement of Generally Available Terms (SGAT) fails to comply with those orders. BST has repeatedly refused to implement standards that it is challenging legally, while it unilaterally takes actions that others are challenging. It refuses to subject the disputes that arise to the resolution process to which it agreed.

(FLA 8 1) There is no evidence in the record showing whether CIC data or ACNA is more reliable. It is in the record, however, that BST has agreed to provide it and does not. This is a violation of its agreement with TCG.

(FLA 82) At hearing, witness Scheye testified that meet point billing is required in most of BST's interconnection agreements, He also stated that BST can provide it to ALECs and that it currently does provided it to independent LECs. BST, despite questioning, has been unable to explain why it is not providing meet point billing data to ALECs.

First, staff believes that this situation must be corrected immediately. BST has not honored the terms of its agreements, and has demonstrated no reason for the lapse.

Second, staffwould expect, in a subsequent proceeding, that BST will demonstrate not only that it is providing meet point billing data, but also show how this failure will not recur. Until then, however, staff believes BST has not complied with the terms of its agreement or the Act.

(DOJ35) BellSouth has failed to show that competitors can be assured of appropriate access to essential inputs, i.e. that they will receive unbundled elements from BellSouth in a manner that allows them to combine those elements,

and that they will have the legally required access to OSS that will permit them to compete effectively through the use of resale or unbundled elements. In addition to these those deficiencies, BellSouth has failed to show that unbundled elements are currently offered, or will be offered in the future, at prices that will permit entry and effective competition by efficient firms, and has failed to show that it will provide objective measures of its wholesale performance that will insure that competitors receive non-discriminatory access to inputs now in the future.

(FLA100) BellSouth appears to providing several, but not all, requested unbundled network elements to competing carriers. In addition, ALECs are experiencing problems with the billii of UNEs, and with the interfaces used to access BST's operations support systems. These problems are contrary to the non-discriminatory requirements of the Act, the applicable FCC rules and orders, and the FPS the arbitration order.

(FLA 165) Staff also notes that BellSouth would have you believe that it's unbundle local loops are functionally available and that some have been provisioned in the state of Florida, However, the FCC concluded in the Ameritech order that pricing UNEs at tariffrates does not meet the BOC's obligation to provide network elements as unbundled network elements.

(FLA174) This commission has established that usage sensitive UNEs will be billed via CAB or that those bills will be CAB-formatted. Staffwould note that BellSouth has not complied with either. Staff is therefore unable to determine if BellSouth has unbundled local transport from other services. Hence, BellSouth is not with compliance of checklist item v.

(FLA241) Staff also notes that an ALEC ordering from the SGAT could only obtained RI-PH or LERG through the bona fide request process since the SGAT offers only RCF and DID. Staffbelieves that since the commission required BST to provide RCF, DID, RI-PH, and LERG upon request the SGAT should offer these interim number portability solutions, and it clearly does not, Therefore staff recommends that the commission deny the portion of the proposed SGAT regarding interim number portability

(FLA252)On cross-examination, BST witness Vamer argued that the FCC has identified ISP traffic as interstate, but has granted an access exemption specifically for ISP traffic. He stated that the FCC has required that ISP traffic be charged at local rates. He also admits that this dispute is the subject of two FCC proceedings and has been taken up in other states where BOCs have taken the same actions as BST. Witness Vamer declined to characterize this issue as a " dispute," but rather as an issue "where there are two points of view as to how it should be resolved." Vamer stated that he was not familiar with dispute resolution clauses in ALEC

contracts. The staff would note, however, that he did voluntarily refer to dispute resolution procedures in the context of the polls, conduits, and right-of-way issue.

Staff believes that BST has in fact violated the terms of its agreements with ALECs by the actions it has taken.

Thus, without going to the merits of the issue, it is clear that 1) BST/ALEC agreements defined local traffic, and there are no restrictions with respect to ISP traffic; 2) this issue was never raised in interconnection negotiations with ALECs prior to signing the agreements; 3) there are procedures for handling disputes in the agreements, and 4) BST has not followed those procedures, thus violating the terms and conditions of those agreements.

We therefore disagree with witness Vamer's characterization, or more specifically, we believe there is no distinction between his characterization and a dispute.

Staff agrees to the ALEC contentions that BST's unilateral actions violates the dispute resolution provisions of its agreements with ALECs. We do not endorse BSTs method of handling this issue in Florida, and we do not believe it reflects well on BST's approach to ALEC carrier relationships. Staff recommends that the parties work to resolve this dispute, and if unsuccessful, bring it before this commission.

(FLA251) We do not attempt to resolve the issue of how ISP traffic should ultimately be handled, in this proceeding. We expect the commission will be asked to do that in the near future as complaints are filed. Whether or not ISP traffic is ultimately required to be treated as local or interstate for compensation purposes, it currently appears local when passed through to network, and is billed by BST as a local call to its customers. Therefore, if BST believed that it needed to be handled in a special fashion, BST needed to specify that clearly in negotiations and its agreements. It did not do this, and in fact, BST itself was apparently paying and billing compensation prior to its letter to ALECs.

XIV. FACILITIES BASED COMPETITION

A. FACILITIES BASED COMPETITION IS INADEQUATE TO MEET THE STANDARD IN SOUTH CAROLINA

Because of the pervasive market power of the ubiquitous, interconnected telecommunications network, Congress required that there be a facilities-based competitor to the incumbent RBOC before it would be allowed to enter the in-region, interLATA market. This was the first condition set on entry and has come to be known as Track A. Congress required a facilities-based competitor for both residential and business customers. There is no such competitor or competitors in South Carolina.

> (DOJiv) At this time, BellSouth faces no significant competition in local exchange services in South Carolina. Lacking this best evidence that the local market has been opened to competition, the Department cannot conclude that its competition standard is satisfied unless BellSouth shows that significant barriers are not impeding the growth of competition in South Carolina. BellSouth has not done so in this application.
>
> (DOJ32) At this time, BellSouth faces no significant competition in local exchange services in South Carolina. We are not aware of any operational facilities-based local exchange competitor *at* the present time. As of September 11, 1997, only 572 residential lines and 1785 busiiess lines had been resold in the entire state.
>
> (C7)In examining the record in this case, it is clear that competition for local service in BellSouth's service territory is virtually nonexistent. Consumers do not have a realistic choice of local service providers. Therefore, the CA urges the commission to find that BellSouth entry into the in-region interLATA market is not currently in the public interest.

B. MOVING FROM TRACK A TO TRACK B

Because Congress understood that entry would be difficult and there would be a variety of incentives and interests at work as the local monopoly was dismantled, Congress gave the RBOCs

an alternative approach, known as Track B. If no request for interconnection were made by a facilities-based competitor, or it could be shown that the competitor did not negotiate in good faith or failed to meet agreed upon timetables, the RBOC could be allowed to enter the in-region InterLATA despite the lack of a facilities-based competition. To qualify for Track B, RBOCs have to show that Track A does not apply. None has done so.

> (CA 4) By its testimony in this case, BellSouth has admitted that Track A is currently unavailable to it, since no such competing provider currently exist in South Carolina.
>
> In order to apply for authority under Track B, BellSouth would have to show that no competing provider capable of providing local exchange service to both residential and business customers over its own facilities has requested access and interconnection from the company. Once such a request has been made, as it has in South Carolina by AT&T and others, Track B is unavailable to BellSouth.
>
> (CA 5) Once a request for interconnection has been made, the only way an RBOC may proceed under Track B is if the state Commission certifies that the only provider or providers making the requests for interconnection have failed to negotiate in good faith, or they have failed to comply with the implementation scheduled contained in an interconnection agreement. Neither instance has been alleged in this case. Therefore, at this time, Track B is unavailable to BellSouth in South Carolina.
>
> (FLA 36-37) BST also asserts that the Act requires only that it provide interconnection access to one or more facilities-based providers that, taken together, serve at least one residential and one business customer. The competing carriers in this proceeding asserts that a certain threshold level of competition must exist before a BOC enters interest the intraLATA market.
>
> However, staff believes that a competing provider serving one residential customer and one business customer does not satisfy the requirements of Section 271 (c)(l)(A). Staff believes that a competing provider must actually be in the market and operational. In addition carriers must be accepting requests for service and providing that service for a fee. It could be argued the provision of access and interconnection to one residential customer and one business customer satisfies the requirement of section 271 (c)(1) (A); however, based on our reading of the Act and the Joint Conference Committee Report, staff does not believe that is the intent of the Act. Staff believes that a competitive alternative should be

operational and offering a competitive service to residential and business subscribers somewhere in the state. In addition staff believes that the competitor must offer a true "dial tone" alternative within the state, and not merely offer service in one business location that has an incidental, insignificant residential presents.

(FLA38-39) Staff believes that it is clear that the intent of the Act is that facilities-based competition exist for both residential and business subscribers. In support of staff's belief the Joint Conference Committee Report states that local exchange service be made available to both residential and business subscribers. Additionally, it states that for a competitor to offer exchange access service to business customers only is not sufficient. Furthermore the Joint Committee Report concludes that resale would not qualify because resellers would not have their own facilities in the local exchange over which they would provide service, thus failing the facilities-based test. Thus, staff believes that it is clear that the intent of the Act is that facilities-based competition exist for both residential and business subscribers.

(FLA50) BST has made no allegations that any of these carriers have negotiated in bad faith or failed to abide by the implementation schedules. Witness Vamer asserts that other than some implied intent to offer service when entering into an agreement, there are no implementation schedules in any of the interconnection agreements entered into by BST with competing carriers.

C. TRACK B

Lacking a facilities-based competitor in South Carolina and failing to make a showing the potential competitors have failed to live up to their part of the bargain, BST has tried to redefine the standard by which the competitive situation should be measured. Having failed to meet either the conditions of Track A or Track B, BST claims that if the two are combined, it might pass the Section 27 1 (c)(1) hurdle. This is impermissible.

(FLA46) Staff generally agrees with the FCC's interpretation of the requirements of section 271 (c)(1) (B)... Specifically, 252 (f) (2) requires that the SGAT meet two criteria:

> it must comply with section 252 (d), which requires non-discriminatory cost-based prices, and regulations for

interconnection, network elements, transport and termination of traffic, and wholesale rates; and

must further comply with Section 25 1, which defines duties of interconnection, unbundled access, and resale.

(FLA50) BST contends that given the wording of this issue, and the circumstances surrounding the development of the wording, the literal answer to the issue would be "no." The intervenors all agree that while BST submitted an SGAT to the commission for approval, the SGAT has neither been approved nor permitted to take effect.

(FLA52-53) The statute provides that a BOC meets the requirements of 271 (c)(1) if it meets the requirements of subparagraph (A) or (B) not (A) and (B). It appears the FCC interprets this to mean that Track A and B are mutually exclusive. Staff agrees.

III. CHECK LI S T I -

A GENERAL CONDITIONS

1. Cost Based Pricing

The first condition Congress placed on entry was to require stipulate the price at which interconnection and access had to be offered. DOJ makes the observation that if a competitor does not have certainty, investment and commitments cannot be made.

> (DOJv)It has failed to demonstrate that it offers cost-based prices for unbundle network elements that permit entry and effective competition by efficient competitors.
>
> (DOJ36) In our view, however, there are a variety of forward looking cost methodologies that are consistent with the statutory requirements, and with the Departments standard for evaluating whether markets are fully and irreversibly opened to competition.
>
> (DOJ38-39) Some rate making methods that were designed to operate in and preserve a regulated monopoly environment would seemed to be fundamentally inconsistent with that standard. For example, use of the "efficient component pricing rule" to establish prices for unbundled network elements would insulate a BOC's retail prices from competition, thereby discouraging entry in markets whose retail prices exceed competitive levels. Such effects would impede the transition from regulated monopoly telecommunications markets to deregulated, competitive markets, and would deprive consumers of the benefits of price competition and new investment in telecommunications services.
>
> Whatever methodology is used, a reasoned application to the particular facts is needed. We expect in most cases, a BOC will be able to demonstrate this by relying on a reasoned pricing decision by a state commission. However, if the state commission has not explained it's critical decisions, or has explained them in terms that are inconsistent with pro competitive pricing principles, the Department will require further evidence that prices are consistent with its Open Market Standard.
>
> (DOJ39-40)Expectations concerning future prices can be as important, or even more important, than current prices. A market will not be "irreversibly" opened to

competition if there is a substantial risk that the input prices on which competitors depend will be increased to inappropriate levels after a section 271 application has been granted. Such price increase obviously could impair competitive opportunities in the future. As important, a substantial *risk* of such a price increase can impair competition *now*. Competitors that wish to use unbundled elements in combination with their own facilities will incur significant costs when they invest in their own facilities. Such investment will not be forthcoming *now* if there is a substantial risk that increases in the prices for complementary assets, i.e. unbundled elements, will raise the competitors total cost to a degree that precludes effective competition.

(DOJ41)The SCPSC has not articulated a forward- looking cost methodology. Indeed, it has stated that it "has not adopted a particular cost methodology." Instead the prices contained in the SGAT were incorporated from several sources, including the BellSouth/AT&T arbitration, existing tariff rates, and rates negotiated in interconnection agreements with other carriers. There is no explanation of the costs on which there are based.

In South Carolina, BellSouth has not demonstrated that current prices permit entry and effective competition by efficient firms, and there-is great uncertainty concerning the prices that will be available in the future. Given this uncertainty, is not surprising that there is no real competition using unbundled elements now, or that competitors plans to compete in the future are subject to many contingencies.

(DOJ43)The SCPSC has expressly refused to articulate the methodology, if any, that it will use to establish "permanent rates," and thus, there is no assurance that the permanent rates will permit efficient competition using unbundled elements..

In short, the record in this application does not establish that either current or future prices for unbundled elements will permit efficient firms to enter and compete effectively.

(CA1-2)The primary requirement in section 252 (d) relevant to this proceeding is that the prices for interconnection and unbundled network elements (UNEs) must be cost based. Therefore, this Commission may not approve BellSouth's SGAT unless it has been demonstrated that the rates for UNEs are cost based, as defined in the Act.

It is clear from the record in this case that the prices for UNEs listed in BellSouth's SGAT are not cost-based as required by the Act.. . None of these rates have been evaluated by this Commission pursuant to the costing standards set forth in the Act. The FCC proxies and the methodology behind them have not been reviewed by this Commission. The prices in the ACSI agreement have not been supported by cost studies, since none were filed in that proceeding, and are subject to true-

up. With regard to tariff rates, this Commission has not reviewed the federal tariff rates, and has not reviewed the costs associated with South Carolina tariffs under the standards of the Act... BellSouth witness Sheye admitted on cross-examination that the company's cost studies regarding UNEs, while in BellSouth offices in Columbia, have not been filed or reviewed by any party to this case, including the Commission and its staff.

2. Operating Support Systems

The second condition set by Congress was non-discriminatory access to functionalities and network elements. BST has performed poorly in making interconnection and access to parts of the network available on non-discriminatory terms.

(Dojv) It has also failed to demonstrate its ability to provide adequate non-discriminatory access to the operation support systems that will be critical to competitors ability to obtain and use unbundled elements and resold services.

(DOJ13-14) Checklist items must be generally offered to all interested carriers, be *genuinely* available, and be offered at concrete *terms*. A mere paper promise to provided a checklist item., or an invitation to negotiate, would not be a sufficient basis for the Commission to conclude that a BOC "is generally offering" all checklist items. Nor would such paper promises provide any basis for the Department to conclude that the market had been fully open to competition, Even in Track B states where there has been no request for access and interconnection to a facilities-based provider seeking to provide residential service, the legal and practical availability of all checklist items will be important to competition, since competitors may need such access and interconnection in the future, as well as to compete now to provide resale service, and service of all kinds to business customers.

(DOJ19-20)BellSouth's South Carolina revised SGAT is legally insufficient, because it fails to describe whether or how BellSouth will provide unbundled elements in a manner that will allow them to be combined by requesting carriers. First, the SGAT does not adequately specify *what* BellSouth will provide, the method in which it will be provided, or the *terms* on which it will be provided, and therefore there is no basis for finding that BellSouth is offering "non-discriminatory access to network elements in accordance with the requirements of sections 25 1 (c)(3) and 252 (d) (1)" as the checklist requires. Second, BellSouth's application does not demonstrate that it has the practical capability to provide unbundled elements in a manner that would permit competing carriers to comply them

(DOJ28-29) As to the current interfaces offered by BellSouth for pre-ordering and ordering functions, we conclude that BellSouth has failed to demonstrate that it will allow for effective competition, and BellSouth's ongoing efforts to address our concerns on this score are still incomplete. The record indicates numerous complaints from CLECs that have not yet been able to obtain sufficient information from BellSouth to permit them to complete development of their own OSSs. BellSouth systems have experienced little commercial use, but that limited experience suggested system inadequacies that have not yet been fully addressed. Moreover, the liited capacity of key systems suggests the performance problems are likely to be far more serious when competitors begin to order unbundled elements or resale services in competitively significant volumes.

In concluding that BellSouth has failed to comply with the checklist requirements governing OSS, we are mindful of SPCPS contrary conclusion. That conclusion was reached, however, before the commission provided its detailed decision on OSS issues in the Michigan order. Indeed, other state commissions in the BellSouth region, including the Alabama and Georgia commissions and the staff of the Florida commission, have expressed serious concerns about the adequacy of BellSouth's system in the wake of the commissions Michigan order.

(S20)Since the vast majority of local subscribers are current customers of the incumbent, if switching of customers is impeded then entry -- through any of the three modes -- would be stopped dead in its tracks. In California, for example, MCI and AT&T's efforts to enter the market were frustrated when PacBell's systems for processing resale orders broke down, causing substantial delays before customer could be switched to competitive carrier and leading those companies to end their marketing campaigns.

(A10) Pre-ordering.. . Among the deficiencies described in the Comments are the lack of the application-to-applications interface, discriminatory functionality, and inadequate capacity.. . Among the problems such CLECs face in the absence of application-to-application interfaces is a double entry problem.. . . .

(A14) In addition to the problems arising from the lack of the application-to-application interface, BellSouth's preordering interface fails to meet the necessary standards because LENS does not offer parity with BellSouth's retail operations. While the Comments cite numerous deficiencies, we here focus on two: access to telephone numbers and service installation dates.. .

(A16)In sum, it appears that a CLEC's ability to provide competing services could be limited by BellSouth's policies rather than by the dictates of the marketplace. Accordingly, BellSouth's policies are contrary to its obligation to provide access to OSS functions on a non-discriminatory basis. We are aware that this issue

stems, in part, from the fact that BellSouth is functioning as the interim numbers administrator, but until a permanent -- and neutral -- administrator takes over, this issue compromises the non-discrimination principles set forth in the Act and the heart of our competitive standard.

(A 19) For example, a CLEC user needs to reserve the telephone number and schedule an installation date, the user would have to validate the address; reserve the telephone number, and then revalidate the same address before scheduling the installation date. Performing four ordering functions for a single order would require that the same address be entered and validated four times. The system used by BellSouth retail representatives requires an address be invalidated only once in the order negotiation process not once for every preordering function.

(A2 l-22) First.. . The interface presently supports the ordering of only business and residential POTS, PBX trunks, and DID trunks, not all the services that BellSouth retail representatives order electronically.

Second, BellSouth's ordering and provisioning systems are providing flow through only on a low portion of those types of orders which are currently supported.. The remaining CLEC orders drop out of the systems and are process manually. [three times as frequently]

Third, even for orders submitted electronically, order rejections due to violations of BellSouth business rules, as well as jeopardy notifications, do not flow back to CLECs electronically: they drop out and are handled manually, typically sent to the CLEC via fax.

(A26) One of the worst problems is Bell South's failure to adequately disclose to competing carriers the internal editing and data formatting requirements and business rules necessary for orders to be accepted, not only at the BellSouth gateway, but also by BellSouth's internal OSSs... Under these circumstances, where adequate documentation and support appear to be lacking, general references to CLEC errors as a major factor in problems, such as rejection or lack of flow through, are unconvincing.

(A27) The Department concludes that BellSouth systems presently have limited capacity and have not been proven effective for handling large, competitively significant volumes of demand. Past experience suggests that limited commercial use at small volumes does not provide an adequate basis upon which to judge the performance of systems that will need to handle much larger volume of orders.

(A28) BellSouth has not demonstrated that its preordering systems are operationally ready.. The existing capacity appears to the woefully inadequate

for either existing or foreseeable demand.

(A8)Accordingly, the SCPSC did not have the benefit of the Commission's Michigan decision, including the important discussion of OSS standards discuss above, when it reviewed BellSouth's SGAT and reached its decision. It is not clear how the SCPSC interpreted the standards it was applying or how those standards compare, in actual application to the standards described in the Michigan order.

(FLA 57-58) Staff believes that a state approved SGAT can be used to show that checklist items are available under section 271 (c)(2) (B) whether the BOC proceeds under Track A or Track B. This is not unlike having a tariff on file that lists what services are available. The inquiry does not end there, however, when determining whether the BOC is checklist compliant. The BOC may not simply rely on the fact that checklist items are contained in a state approved SGAT or in a state approved interconnection agreement. They must show that they are actually providing the checklist items or that the items are functionally available. This is consistent with the overall goals of the Act which is to open all telecommunications markets to competition

Staff does not believe, however, that a state approved SGAT should be the primary avenue for demonstrating checklist compliance in a Track A application. The main objective of section 271 (c)(1) (A), Track A, appears to be facilities-based competition, whereas, section 27 1 (c)(1) (B), is available absent a facilities-based competitor. Therefore, Track A applicants should first demonstrate checklist compliance through a state approved interconnection agreement.

3. Performance Measures

One of the primary responses to the discrimination problem that has been proposed by the FCC and the DOJ is to insist on rigorous performance measures. Fully defined and implemented performance measurement systems are needed. BST's fall far short of what is required.

(DOJv) And, it has failed to measure and report all the indicators of wholesale performance that are needed to demonstrate that it is currently providing adequate access and interconnection and to ensure the acceptable levels of performance will continue after the section 271 authority is granted.

(DOJ46) Most significantly, BellSouth has not provided actual installation

intervals, instead relying on the "percentage of due dates missed." Yet the type of measurement upon which BellSouth relies is not sufficient to demonstrate parity: if BellSouth were to miss 10 percent of scheduled due dates for both BellSouth retail operations and CLEC customers, but missed the scheduled date by an average of one-day for its own customers and an average of seven days for CLEC customers BellSouth's measurement would be equal and yet would conceal a significant lack of parity.

(DOJ47)In addition, BellSouth has no performance measurements for pre-ordering functions; few measurements for ordering functions; and no measurements for billing timeliness, accuracy and completeness. BellSouth is also missing numerous significant measures involving service quality, operator services, Director Assistance, and 911 functions. Also, while BellSouth has committed to measuring firm order confirmation cycle, and reject cycle time, the development of these measurements is incomplete and results are not yet available. Collectively, these deficiencies prevent any conclusion that adequate non-discriminatory performance by BellSouth can be assured now or in the future.

(F3 1) Specific performance measures BellSouth should be required to provide include the following. "Include as an ongoing measurement" refers to performance measures included in interconnection agreements but not proposed as a permanent measure. Critical measures are in italics, and bold face indicates additional measures.

- Pre-Order OSS Availability
- ***Pre-order System Response Times- Five key functions***
- ***Firm Order Confirmation Cycle Time:*** Complete State-Specific Development
- ***Reject Cycle Time:*** Complete State-specific Development
- Total Service Order Cycle Time
- ***Service Order Quality:*** One or more suggested Measures
- Ordering OSS Availability
- ***Speed of Answer-Ordering Center***
- ***Average Service Provisioning Interval***
- ***Percent Service Provisioned Out of Interval:*** Include as an Ongoing Measurement
- Port Availability
- Complete Order Accuracy
- ***Orders Held For Facilities***
- ***Repair Missed Appointment for UNE:*** Include as an Ongoing Measurement
- Maintenance OSS Availability
- ***Billing Timeliness:*** Include as an Ongoing Measurement

configurations over the. years that are not necessarily friendly to entrants from a design perspective.

We find that the 911 design requirements are clearly defined in the SGAT in Section 7.A.4. All of the ALECs, ILECs, and BellSouth are held to these same requirements. Upon consideration, we do not believe that WorldCom's argument demonstrates that BellSouth is not providing nondiscriminatory access to 911. By virtue of the fact that BellSouth has been providing 911 service for almost 20 years, it is hardly surprising that new entrants will need to expend company resources to achieve a level of infrastructure that is necessary to provide the same services.

ICI argues it does not have nondiscriminatory access to 911 because in any case where ICI orders UNEs, 911 is required. Since BellSouth has been unable to deliver certain UNEs, 911 services are not being provided with those UNEs.

ICI does not claim that BellSouth provides discriminatory access to 911 services, but rather that since ICI cannot get BellSouth to provide a certain UNE, then it cannot get 911 in conjunction with that UNE. While ICI should be able to receive all UNEs that it requests from BellSouth, we do not believe that BellSouth's failure to provide one UNE necessarily adversely affects determination of compliance with other checklist items.

Upon consideration of the evidence in the record, it appears that BellSouth is providing nondiscriminatory access to 911 in compliance with checklist item vii.

2. **Directory Assistance**

As the FCC stated, "if a competing provider offers directory assistance, any customer of that competing provider should be able to access any listed number on a nondiscriminatory basis, notwithstanding the identity of the customer's local service provider, or the identity of the telephone service provider for the customer whose directory listing is requested." That is, all ALEC customers should be able to use directory assistance and receive the same information as BellSouth customers.

The record reveals that as of June 1, 1997, there were 156

specific findings that its provisions would allow requesting carriers to combine network elements in a reasonable and non-discriminatory manner.. . As we explain below, this offering does not satisfy the checklist requirements regarding unbundled elements.. .

(FLA82) MCI states that in order to provide competitive local service at the same level of quality as BST it must be able to terminate traffic throughout a local calling area. MCI cited its experience in Memphis where calls between BST and Southwestern Bell's (SBC's) local service area were block by BST. BST stated it would not pass MCI traffic to SBC until MCI had established an interconnection agreement with SBC. MCI says that BST must be required to terminate calls that MCI cannot in areas served at least in part by BST, so that MCI customers will not be isolated.

(FLA 84-85) BSTs general response to many parties' criticisms of its checklist performance in relation to their own agreements, is that ALECs are merely trying to delay competition. In fact, in its brief BST states that the ultimate test in this proceeding that BST must meet is not whether BST has the fulfilled all the terms of its agreements with ALECs but whether it has made interconnection generally available to ALECs, as required by section 252 (f) and 27 1. Staff does not agree that is all that is required of BST.

Staff concludes that BST has not fulfilled all the terms of its agreements, and has not made a showing that it has complied with the requirements of the Act because carriers cannot compete meaningful under the terms of their agreements. Staff therefore recommends that BST has not satisfied the requirements of checklist item No. I, and therefore fails on this issue.

As noted in this issue, since some interconnection provisions have not yet been established, there is no way to conclude, until they have been implemented, whether or not BST has complied with the terms of the Act or ALEC agreements. Physical collocation is a prime example, as well as the problems surrounding virtual collocation.

ITEM ii: UNBUNDLED NETWORK ELEMENTS

(DOJiv) BellSouth has failed to demonstrate that it offers access to unbundle network elements in a manner that allows requesting carriers to combine such elements in order to provide telecommunications services, as required by the Act.

(DOJ, 23, 24, 25) In terms of implementing any arrangements necessary to

combine elements, we would look to see how BellSouth would perform any additional functions necessary to allow elements to be combined by a CLEC. As it is not even clear what those practices will be, BellSouth has not yet demonstrated that it possesses the technical capability to satisfy this requirement in a reliable, commercially acceptable manner. Thus, for all the reasons stated above, BellSouth has not satisfied its burden of showing that it has the practical ability to provide these elements as required by the checklist.

BellSouth's failure to establish that it will offer unbundled elements in a manner that will allow other carriers to combine them to offer telecommunications services has substantial implications for the development of competition in South Carolina.. .

If unbundled elements are provided in a manner that requires CLECs to incur large costs in order to combine them, many customers -- -- especially residential customers -- -- may not have facilities based competitive alternatives for local service for a considerably longer period of time..

The implication in BellSouth's South Carolina revised SGAT that it will require CLECs to establish co-location facilities in order to combine elements also has important competitive ramifications. Such requirement would entail substantial cost and delay CLECs wishing to use a combinations of elements.

In short BellSouth's failure to show checklist compliance in this area should not be regarded as a mere technicality. Bather that failure carries with it a substantial threat to the viability of competition using unbundled network elements, one of the key entry vehicles established by the 1996 Act.

(FLA124) LENS and ED1 do not incorporate the same level of online edit capabilities as BST's internal interfaces. There is, therefore, a higher chance that orders will contain mistakes, which will be rejected by the downstream systems. The result of the limited edit capability is that ALEC orders will take longer to actually the provisions, than BST orders.

(FLA125) BST has not demonstrated that its systems can process the number of orders per day that it claims it can. The consulting firm hired by BST to perform an analysis of the local Carrier Service Center (LCSC), stated in its report that BST has missed service implementation dates. In addition, BST has experienced problems providing firm order confirmation's (FOCs) in a timely manner. This results in the ALEC not knowing when service is actually implemented, and has resulted in billing statements being sent to the end-user by both BST and the ALEC. Although, BST claims that it is currently receiving approximately 200 orders per day, BST has not demonstrated that it can effectively handle this low

volume of orders in an accurate and timely fashion. Therefore, staff does not believe that BST can currently meet service order demand requirements.

(FLA128) A major area of concern with respect to the interfaces offered by BST is the amount of manual intervention that is required on behalf of an ALEC service rep. The primary problem is that BST does not provide a pre-ordering interface that provides these functions in essentially the same time and manner as BST's internal system. In addition, the interface must apply the capability to interconnect the ALECs own internal OSS to BST's OSS. BST has not provided technical data to requesting carriers to permit the development of such interconnection.

ITEM iv: UNBUNDLED LOOP TRANSMISSION

(FLA165) Staff agrees with ICI that BellSouth has not conclusively determined whether it can bill for UNEs using the CAB billing systems or some other alternative,. . Staff agrees with MCI that such long provisioning intervals limit the ALECs reasonable opportunity to compete in the local market. Again, until such time that BellSouth can provide performance data on its operations and those of competing carriers, the ALECs allegedly will be subjected to lessen quality of service than BellSouth.

(FLA167) Staff believes that BellSouth's provision of unbundled local loops at tariffed rates and then applying necessary credits to give the appearance of UNEs pricing is in violation of the Act's requirements for this checklist item. Staff notes that BellSouth has problems with billing of unbundled loops, such as billing for UNEs as unbundled elements and at the specified UNE rates. BellSouth's ability to bill for the unbundled local loop as an unbundled element and at the specified UNE rate is critical in making an affirmative determination as to BellSouth's compliance with checklist item iv. Specifically this commission ordered BellSouth to bill for UNEs using a CAB-formatted billing at minimum. BellSouth did not conclusively say it could bill for UNEs using the CAB billing system, or provide the billing in CAB-format. In the instances whereby BellSouth provided bills, the ALECs expressed dissatisfaction and the fact that the elements are not billed as UNEs. Therefore, staff is unable to ascertain that BellSouth has unbundled the local loop from other services.

ITEM v: LOCAL TRANSPORT

(FLA174) Based on the evidence in the record that BellSouth cannot bill for usage

sensitive UNEs, staff believes that BellSouth does not meet this checklist item..

ITEM vi: LOCAL SWITCHING

(FLA175) Based on the evidence in the record, BellSouth has not provisioned all of the unbundled local switching requested by ALECs. BellSouth has experienced significant billing related problems in the provisioning of these unbundled -local switching.

ITEM vii: EMERGENCY, DIRECTORY AND OPERATOR SERVICES

(195- 196) AT&T said that it has not yet requested selective routing in Florida due to all of the problems that BST has run into trying to provide selective routing to AT&T in Georgia

Staff believes that since BST can selectively route its own calls, then BST should provide selective routing to which ever ALEC of ILEC requests it. BST has not demonstrated that it can provide selective routing, and therefore this is a discriminatory practice.

AT&T also complains about BST branding its DA services as "BST," but not providing AT&T the proper opportunity to do this same, AT&T further stated that AT&T has not ordered branding in Florida because of all the problems that BST has faced in Georgia.

BST replies that AT&T can order unbranded or special branded service if they so choose. While BST states this, it does not appear that BST is currently able to provide this service. While it is obvious that BST and AT&T are working together to iron out the problems associated with branding, as well as selective routing, it does not appear that BST is in a position to provide these services at this time.

MCI stated that it does not have access to all of the information in the directory assistance database that BST has access to. MCI cannot get the numbers from an ALEC or an ILEC unless that ALEC or ILEC gives permission to BST. Therefore, while BST can get the ILEC customers information, MCI cannot.

Staff would agree with the FCC's interpretation of the non-discriminatory requirements for the provision of directory listings as an unbundled element and believes that BST's refusal to provide access to all is a violation of this non-discriminatory provision. BST essentially has control to some extent as to the circumstances to which carriers place directory listings in their database. Staff